

DOA:.....Wavrunek, BB0514 - Probation supervision for misdemeanors

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1-23

Do Not Gen

1

AN ACT ...; relating to: the budget

*Analysis by the Legislative Reference Bureau***CORRECTIONAL SYSTEM**

Under current law, with certain exceptions, a trial court may sentence a person who has been convicted of a crime to probation instead of imprisonment. A person who is on probation is supervised by DOC and is subject to conditions and rules established by the sentencing court and by DOC.

This bill requires DOC to establish a "risk assessment system" to determine how likely a person on probation is to commit another offense. The bill requires DOC to categorize the person who is on probation for committing a misdemeanor according to his or her risk. Under the bill, DOC may not supervise a person who is on probation for committing a misdemeanor unless the person is at the highest or second highest level of risk or unless the person ~~is required to~~ register as a sex offender or has ever committed a crime against the life or bodily security of another person, a domestic violence offense, burglary of a home, or certain serious drug offenses.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 973.10 (1) Imposition of probation shall have the effect of placing the defendant
 2 in the custody of the department and, ^{sub.} ~~subject to s. 973.10~~ (1g), shall subject the
 3 defendant to the control of the department under conditions set by the court and
 4 rules and regulations established by the department for the supervision of
 5 probationers, parolees and persons on extended supervision.

History: 1971 c. 298; 1975 c. 41, 157, 199; 1977 c. 347; 1981 c. 50; 1983 a. 27, 197; 1985 a. 262 s. 8; 1989 a. 31, 107; 1995 a. 96, 387; 1997 a. 283; 2005 a. 42.

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7 973.10 (1g) (a) The department shall establish by rule a system for
 8 categorizing a probationer's level of risk for committing another offense. The system
 9 established under this subsection may contain no fewer than 4 levels of risk, with a
 10 person who poses the most risk classified at the highest level of risk.

11 (b) The department shall assess the risk of each person sentenced to probation
 12 for a misdemeanor under s. 973.09 and shall classify the person according to his or
 13 her level of risk.

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 15 973.09 for a misdemeanor only if one of the following applies:

16 1. The department classifies him or her under par. (a) ^{at} in the highest or ^{2nd} ~~second~~
 17 to highest level of risk.

18 2. The person is a violent offender, as defined in s. 16.964 (12) ^(a).

19 3. The person is required to register as a sex offender under s. 301.45.

20 4. The person has been convicted in his or her lifetime of violating ^{ch. 940 or}
 21 s. 968.075 (1), 943.10 (1m) (a), 961.41 (1) (a), (b), (cm), (d) or (g) or (1m) (a), (b), (cm),
 22 (d), ^{or (e)} ~~or (g)~~, 961.455 or 961.456. ^{or ch. 940}
 23 ^{(e), or (h)}

24 **SECTION 9311. Initial applicability; Corrections**

- 1 (1) PROBATION SUPERVISION OF MISDEMEANANTS. The treatment of section 973.10
2 ^{and (lg)}
3 (1) ~~and the creation of section 973.10 (lg)~~ of the statutes first applies to a person
4 sentenced on February 1, 2003.

(END)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1746/Pt

PJH:wlj:ph

DOA:.....Wavrunek, BB0514 - Probation supervision for misdemeanors

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1-26-09

Don + Gen

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24 **SECTION 9311. Initial applicability; Corrections**

*committing any crime
involving the use of a weapon
or of*

- 1 (1) PROBATION SUPERVISION OF MISDEMEANANTS. The treatment of section 973.10
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- 3 (END)

Hurley, Peggy

From: Steinmetz, Jana D - DOA [Jana.Steinmetz@Wisconsin.gov]
Sent: Tuesday, January 27, 2009 3:02 PM
To: Hurley, Peggy
Cc: Ozanne, Ismael R - DOC; Wavrunek, Leah J - DOA
Subject: Draft 1746 misd probation

Peggy,

We have one last change to the misdemeanor probation draft. I know we added "an offense involving a weapon" yesterday, but we also need to add

"A case charged as a felony that ended in a misdemeanor disposition"

Thanks,
Jana

01/27/2009

Hurley, Peggy

From: Ozanne, Ismael R - DOC [Ismael.Ozanne@Wisconsin.gov]
Sent: Tuesday, January 27, 2009 4:19 PM
To: Steinmetz, Jana D - DOA
Cc: Hurley, Peggy
Subject: RE: Draft 1746 misd probation

Looks good to me, perfect how it ties to the conduct.

From: Steinmetz, Jana D - DOA
Sent: Tuesday, January 27, 2009 4:12 PM
To: Ozanne, Ismael R - DOC
Cc: Wavrunek, Leah J - DOA
Subject: FW: Draft 1746 misd probation
Importance: High

Works for me? Are you ok with it?

From: Hurley, Peggy [mailto:Peggy.Hurley@legis.wisconsin.gov]
Sent: Tuesday, January 27, 2009 4:05 PM
To: Steinmetz, Jana D - DOA
Subject: RE: Draft 1746 misd probation

Okay, I think I got it. I drafted in that the department may supervise a person only if (the other things included in the earlier draft) or "5. The person had been charged with a felony for the conduct that resulted in the misdemeanor conviction." OK?

From: Steinmetz, Jana D - DOA [mailto:Jana.Steinmetz@Wisconsin.gov]
Sent: Tuesday, January 27, 2009 4:02 PM
To: Hurley, Peggy
Cc: Ozanne, Ismael R - DOC; Wavrunek, Leah J - DOA
Subject: RE: Draft 1746 misd probation

Peggy,

If originally charged with a felony, but convicted of a misdemeanor, that person must be supervised.

Thanks,
 Jana

From: Hurley, Peggy [mailto:Peggy.Hurley@legis.wisconsin.gov]
Sent: Tuesday, January 27, 2009 3:35 PM
To: Steinmetz, Jana D - DOA
Subject: RE: Draft 1746 misd probation

Hi Jana,

I'm a little confused as to how this would work. Would the people making the classification know if the person was originally charged with a felony? Would that factor into their classification, or do you want to say that regardless of how the person is classified, if he/she was originally charged with a felony but found guilty of a misdemeanor, that person must be supervised? Please clarify.

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01/27/2009

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Cc: Ozanne, Ismael R - DOC; Wavrunek, Leah J - DOA

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24 or ch. 940.

25 **SECTION 9311. Initial applicability; Corrections**

Insert 2.24

3 (END)

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1746/P2ins
PJH:wlj&kjf:ph

INSERT ANALYSIS:

no # one of the following is true: 1) ^{g applies} The person is at the highest or second-highest level of risk; 2) the person is required to register as a sex offender; 3) the person had been charged with a felony for the conduct that resulted in the misdemeanor conviction; or 4) the person has ever committed a crime against the life or bodily security of another person, a domestic violence offense, a burglary of a home, a crime involving a weapon, or certain serious drug offenses.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

INSERT 2.24:

5. The person had been charged with a felony for the conduct that resulted in the misdemeanor conviction.

Hurley, Peggy

From: Steinmetz, Jana D - DOA [Jana.Steinmetz@Wisconsin.gov]
Sent: Wednesday, January 28, 2009 12:42 PM
To: Hurley, Peggy
Cc: Wavrunek, Leah J - DOA; Ozanne, Ismael R - DOC
Subject: RE: LRB Draft: 09-1746/P2 Probation supervision for misdemeanors

Correct. No delayed effective date.

From: Hurley, Peggy [mailto:Peggy.Hurley@legis.wisconsin.gov]
Sent: Wednesday, January 28, 2009 12:36 PM
To: Steinmetz, Jana D - DOA
Subject: RE: LRB Draft: 09-1746/P2 Probation supervision for misdemeanors

You don't want a delayed effective date?

From: Steinmetz, Jana D - DOA [mailto:Jana.Steinmetz@Wisconsin.gov]
Sent: Wednesday, January 28, 2009 12:35 PM
To: Hurley, Peggy
Cc: Wavrunek, Leah J - DOA; Ozanne, Ismael R - DOC
Subject: RE: LRB Draft: 09-1746/P2 Probation supervision for misdemeanors

Peggy,

Yes to everything but changing the effective date.

From: Hurley, Peggy [mailto:Peggy.Hurley@legis.wisconsin.gov]
Sent: Wednesday, January 28, 2009 12:24 PM
To: Steinmetz, Jana D - DOA
Cc: Wavrunek, Leah J - DOA; Ozanne, Ismael R - DOC
Subject: RE: LRB Draft: 09-1746/P2 Probation supervision for misdemeanors

From: Steinmetz, Jana D - DOA [mailto:Jana.Steinmetz@Wisconsin.gov]
Sent: Wednesday, January 28, 2009 12:06 PM
To: Hurley, Peggy
Cc: Wavrunek, Leah J - DOA; Ozanne, Ismael R - DOC
Subject: FW: LRB Draft: 09-1746/P2 Probation supervision for misdemeanors
Importance: High

So, here are my drafting instructions as I understand them:

1. Page 3, line 1: add "or adjudicated" after "convicted"
2. Page 3, line 2: add "or possession" after "use"
3. Page 3, line 9: after that line, add an effective date of January 1, 2011

I don't believe it is necessary to add "current" to page 3, line 6 after "the". In context, the words "the misdemeanor conviction" means the conviction for which the person may be supervised under this statute. I think saying "the current misdemeanor conviction" would be superfluous. On the other hand, there are a handful of statutes in chapter 973 that use "the current [violation or offense or alleged violation]", so I guess it wouldn't hurt. This can be your call.

01/28/2009

Am I missing anything, or is this good to go?

From: Ozanne, Ismael R - DOC
Sent: Wednesday, January 28, 2009 11:56 AM
To: Wavrunek, Leah J - DOA; Steinmetz, Jana D - DOA
Cc: Raemisch, Rick F - DOC; Smith, Amy R - DOC
Subject: RE: LRB Draft: 09-1746/P2 Probation supervision for misdemeanors

Language changes

Comments from budget which are very good.

Section 4 page 3. line 1. in order to also take into account juvenile offenses and history should read: convicted or adjudicated ...

Also in section 4 do we want to, or need to indicate these are WI offenses, since there is an uncertainty on the accuracy of some out of state data or lack there of on information and convictions.

Section 5. page 3. line 6. should read: the current misdemeanor conviction.

Risk Assessment tool

The new tool to be acquired this biennium will not be on line till December or 2010 at the current rate assuming all moves as planned. I have asked the reentry group to look at the time line but not likely to shave a ton of time off that date. We currently use the 502 which will give us risk to reoffend and risk to abscond I believe. I'm not sure if it is broken into levels I will check on this. I think we would use the 502 till the new one is on line other wise we are looking at a start date of January 1, 2011, for the new tool. The new tool should give us risk to reoffend, risk to reoffend violently, custody level, risk to escape, assaultiveness, just to give you an idea.

From: Wavrunek, Leah J - DOA
Sent: Wednesday, January 28, 2009 11:06 AM
To: Ozanne, Ismael R - DOC
Cc: Steinmetz, Jana D - DOA
Subject: RE: LRB Draft: 09-1746/P2 Probation supervision for misdemeanors

Ish,

Under the current draft, the effective date of the new risk assessment to determine probation eligibility is July 1, 2009 (assuming the budget passes on time). Is this sufficient lead time for DOC to get the system in place?

Thanks,
leah

From: Steinmetz, Jana D - DOA
Sent: Wednesday, January 28, 2009 10:35 AM
To: Ozanne, Ismael R - DOC; Couey, Roland - DOC; Widzinski-Pollock, Lucie M - DOC
Cc: Silver, Karina B - DOA; Wavrunek, Leah J - DOA
Subject: FW: LRB Draft: 09-1746/P2 Probation supervision for misdemeanors
Importance: High

Please review and respond ASAP.

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Wednesday, January 28, 2009 10:02 AM
To: Wavrunek, Leah J - DOA
Cc: Steinmetz, Jana D - DOA; Hanaman, Cathlene - LEGIS; Beadles, Kathleen - DOA
Subject: LRB Draft: 09-1746/P2 Probation supervision for misdemeanors

01/28/2009

Following is the PDF version of draft 09-1746/P2.

R3
1mr

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FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1-28

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current

pyrnr

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a high

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(END)

Insert 3.6

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1746/P3ins
PJH:wlj&kjf:ph

INSERT 2.7:

(a) In this subsection:

1. "Member of the family" means spouse, child, parent, sibling, or legal guardian.
2. "Risk assessment" means the application of an objective instrument supported by research to determine how likely an offender is to commit another offense.
3. "Victim" means a person against whom a crime has been committed.

INSERT 3.6:

(e) If the department determines that the department may not supervise a person under this subsection, the department shall make a reasonable attempt to provide written notification to the victim of the person or a member of the victim's family that the person will not be supervised while he or she is on probation.

SECTION 1. 950.04 (1v) (v) of the statutes is amended to read:

950.04 (1v) (v) To have the department of corrections make a reasonable attempt to notify the victim under s. 301.046 (4) regarding community residential confinements, under s. 301.048 (4m) regarding participation in the intensive sanctions program, under s. 301.38 regarding escapes from a Type 1 prison, under s. 301.46 (3) regarding persons registered under s. 301.45, under s. 302.105 regarding release upon expiration of certain sentences, under s. 304.063 regarding extended supervision and parole releases, and under s. 938.51 regarding release or escape of a juvenile from correctional custody, and under s. 973.10 (1g) (e) regarding

of the victim

a determination by the department of corrections that the department may not
supervise an offender.

History: 1979 c. 219; 1983 a. 102, 364; 1985 a. 311; 1987 a. 332 s. 64; 1989 a. 31; 1997 a. 181, 237, 283; 1999 a. 9, 32, 188; 2001 a. 16, 109; 2003 a. 224; 2005 a. 155, 277, 434, 447; 2007 a. 20 ss. 3863, 9121 (6) (a); 2007 a. 97.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1746/P4
PJH:wlj&kjf:md

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Under current law, with certain exceptions, a trial court may sentence a person who has been convicted of a crime to probation instead of imprisonment. A person who is on probation is supervised by DOC and is subject to conditions and rules established by the sentencing court and by DOC.

This bill requires DOC to establish a "risk assessment system" to determine how likely a person on probation is to commit another offense. The bill requires DOC to categorize the person who is on probation for committing a misdemeanor according to his or her risk. Under the bill, DOC may not supervise a person who is on probation for committing a misdemeanor unless one of the following applies: 1) the person is at a high level of risk; 2) the person is required to register as a sex offender; 3) the person had been charged with a felony for the conduct that resulted in the misdemeanor conviction; or 4) the person has ever committed a crime against the life or bodily security of another person, a domestic violence offense, a burglary of a home, a crime involving a weapon, or certain serious drug offenses.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 950.04 (1v) (v) of the statutes is amended to read:

2 950.04 (1v) (v) To have the department of corrections make a reasonable
3 attempt to notify the victim under s. 301.046 (4) regarding community residential
4 confinements, under s. 301.048 (4m) regarding participation in the intensive
5 sanctions program, under s. 301.38 regarding escapes from a Type 1 prison, under
6 s. 301.46 (3) regarding persons registered under s. 301.45, under s. 302.105
7 regarding release upon expiration of certain sentences, under s. 304.063 regarding
8 extended supervision and parole releases, and under s. 938.51 regarding release or
9 escape of a juvenile from correctional custody, and under s. 973.10 (1g) (e) regarding
10 a determination by the department of corrections that the department may not
11 supervise an offender.

12 **SECTION 2.** 973.10 (1) of the statutes is amended to read:

13 973.10 (1) Imposition of probation shall have the effect of placing the defendant
14 in the custody of the department and, subject to sub. (1g), shall subject the defendant
15 to the control of the department under conditions set by the court and rules and
16 regulations established by the department for the supervision of probationers,
17 parolees and persons on extended supervision.

18 **SECTION 3.** 973.10 (1g) of the statutes is created to read:

19 973.10 (1g) (a) In this subsection:

20 1. "Member of the family" means spouse, child, parent, sibling, or legal
21 guardian.

1 2. "Risk assessment" means the application of an objective instrument
2 supported by research to determine how likely an offender is to commit another
3 offense.

4 3. "Victim" means a person against whom a crime has been committed.

5 (b) The department shall establish by rule a system for risk assessment that
6 classifies a probationer's level of risk for committing another offense. The system
7 established under this subsection shall contain levels of risk, with a person who
8 poses the most risk classified at the highest level of risk.

9 (c) The department shall assess the risk of each person sentenced to probation
10 for a misdemeanor under s. 973.09 and shall classify the person according to his or
11 her level of risk.

12 (d) The department may supervise a person sentenced to probation for a
13 misdemeanor under s. 973.09 only if one of the following applies:

14 1. The department classifies him or her under par. (a) at a high level of risk.

15 2. The person is a violent offender, as defined in s. 16.964 (12) (a).

16 3. The person is required to register as a sex offender under s. 301.45.

17 4. The person has, in his or her lifetime, been convicted of or adjudicated
18 delinquent for committing any crime involving the use or possession of a weapon or
19 of violating s. 968.075, 943.10 (1m) (a) or (e), 961.41 (1) (a), (b), (cm), (d), (e), or (h)
20 or (1m) (a), (b), (cm), (d), (e), or (h), 961.455, or 961.46 or ch. 940.

21 5. The person had been charged with a felony for the conduct that resulted in
22 the current misdemeanor conviction.

23 (e) If the department determines that the department may not supervise a
24 person under this subsection, the department shall make a reasonable attempt to

1 provide written notification to the victim of the person or a member of the family of
2 the victim that the person will not be supervised while he or she is on probation.

3 **SECTION 9311. Initial applicability; Corrections**

4 (1) PROBATION SUPERVISION OF MISDEMEANANTS. The treatment of section 973.10
5 (1) and (1g) of the statutes first applies to a person sentenced on February 1, 2003.

6 (END)